1186.

SUPREME COURT OF THE UNITED STATES.

No. 125.

THE UNITED STATES, PLAINTIFF IN ERROR,

vs.

ANDREW HODGE, JUN'R, AND LEVI PIERCE.

IN ERROR TO THE CIRCUIT COURT U. S. FOR THE EASTERN DISTRICT OF LOUISIANA.

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J. & G. S. GIDEON, printers.

UNITED STATES CIRCUIT COURT, *Ninth circuit,*
Eastern district of Louisiana:

Be it remembered that, on this seventeenth day of April, in the year of our Lord one thousand eight hundred and forty-one, came into the court of the United States, ninth circuit, in and for the eastern district of Louisiana, the United States of America, by Thomas Slidell, their attorney, and filed the following, to wit:

THE UNITED STATES OF AMERICA
vs.
ANDREW HODGE, JR., & LEVI PIERCE.

To the honorable the circuit court of the United States for the ninth circuit, holding sittings in and for the eastern district of Louisiana:

The petition of the United States of America and of Thomas Slidell, their attorney, for the district aforesaid, respectfully shows—

That Andrew Hodge, junior, and Levi Pierce, of the city of New Orleans and district aforesaid, and therein residing, are justly indebted unto the said United States of America in the sum of $25,000, with interest thereon, from the 3d December, 1839, at the rate of six per cent. per annum, for this, to wit: That on the 19th December, 1836, within the said United States, William H. Ker then being postmaster of the said United States at New Orleans aforesaid, the said Hodge and the said Pierce did, with the said Ker, duly sign, seal, and execute, in presence of T. R. Hyde and H. B. Cenas, lawful witnesses, and the same duly deliver, their joint and several bond to the said United States, and by them, to wit, on said day duly accepted, in the words following, to wit: Know all men by these presents, that we, William H. Ker, of New Orleans, in the parish of New Orleans, State of Louisiana, and Levi Pierce and Andrew Hodge, jr., both also of the aforesaid parish of New Orleans, are held and firmly bound unto the United States of America, in the just and full sum of twenty-five thousand dollars, for the payment whereof, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. In witness whereof, we have hereunto subscribed our names, and affixed our seals, this nineteenth day of December, in the year of our Lord one thousand eight hundred and thirty-six.

The condition of this obligation is such, that whereas the above bounden William H. Ker is postmaster at New Orleans aforesaid, now, if the said William H. Ker shall well and truly execute the duties of said office according to law and the instructions of the Postmaster General, and faithfully, once in three months, and oftener if thereunto required, render accounts of his receipts and expenditures, as postmaster, to the General Post Office, in the manner and form prescribed by the Postmaster General in his several instructions to postmasters, and shall pay the balance of all moneys that shall come to his hands for the post-

age of whatever is, by law, chargeable with postage, in the manner prescribed by the Postmaster General of the United States for the time being; and shall also faithfully do and perform, as agent for the Post Office Department, all such acts and things as may be required of him by the Postmaster General; and moreover shall faithfully account with the United States, in the manner directed by the said Postmaster General, for all moneys, bills, bonds, notes, receipts, and other vouchers which he, as agent as aforesaid, shall receive for the use and benefit of the said Post Office Department, then the above obligation shall be void.

Signed, WM. H. KER, [SEAL.]
LEVI PIERCE, [SEAL.]
A. HODGES, JR. [SEAL.]

And your petitioners hereunto annex a duly authenticated copy of said bond, for reference and greater certainty. And your petitioners show that at the time of the signing, sealing, execution, and delivery to your petitioners of the bond aforesaid, said Ker was the lawful postmaster of said United States at and for New Orleans, and from and after the said date did so continue, and the functions of the said office did exercise, till a long time thereafter, to wit, the 18th day of August, 1839. And your petitioners show that, since the said 19th December, 1836, the condition of said bond hath been broken and violated by the said Ker, in this, to wit, that the said Ker did not well and truly execute the duties of said office according to law and the instructions of the Postmaster General, nor did he faithfully, once in three months, and being thereto required, render accounts of his receipts and expenditures, as postmaster aforesaid, to the General Post Office in the manner and form prescribed by the Postmaster General in his several instructions to postmasters; nor did he pay the balance of all moneys that came into his hands as such postmaster for the postage of whatever was, and is, by law chargeable with postage, in the manner prescribed by the Postmaster General of the United States for the time being; nor did he faithfully do and perform, as agent for the Post Office Department, all such acts and things as were required of him as such officer by the Postmaster General; nor did he faithfully account with the United States, in the manner directed by the said Postmaster General, for all moneys, bills, bonds, notes, receipts, and other vouchers, which he, as agent as aforesaid, did receive for the use and benefit of the said Post Office Department; but, on the contrary, the said Ker being indebted, after a full and just settlement of his official accounts, in the sum or balance of $93,347 78, as fully and justly exhibited in the annexed duly authenticated and certified statement of his official account, and resulting from the official receipt and collection, by said Ker, for and on behalf of the said United States, of divers large sums of money therein detailed, and to the said United States belonging, hath failed and refused to pay over the same to the said United States, or to their duly constituted officers, and during such his official capacity, and the time or term in said bond and condition contemplated, became and is yet justly indebted to the said United States in the sum of $93,347 78, besides

large arrears of interest thereon ; and for the full and due exhibition of the breaches and violations of the conditions of said bond, said duly certified statement is annexed as part of this petition, and the same is prayed to be considered as herein embodied. By reason whereof, your petitioners show that said Andrew Hodge, junior, and Levi Pierce have become justly indebted, in solido, to the said United States of America in the sum of $25,000, and the interest thereon as aforesaid, and the same to pay said defendants have neglected and refused, though thereto amicably requested.

Wherefore it is prayed that said Andrew Hodge, junior, and Levi Pierce be duly cited, and after due proceedings had, condemned in solido to pay to the said United States of America the said sum of $25,000, with interest as aforesaid, and costs of suit, and petitioners ask for general relief.

Signed, THOMAS SLIDELL,
U. S. Attorney for Eastern Dist. of La.

And on the same day and year aforesaid the following citation was issued, to wit:

The President of the United States of America, to the marshal of the eastern district of Louisiana, or his lawful deputy, greeting:

THE UNITED STATES OF AMERICA
vs.
ANDREW HODGE, JR., & LEVI PIERCE.

To Andrew Hodge, jr.: You are hereby commanded to summon Andrew Hodge, jr., and you, Andrew Hodge, jr., are hereby cited to comply with the demand contained in the petition, of which a copy accompanies this citation, or deliver his answer to the same, in the office of the clerk of the circuit court of the United States, ninth judicial circuit and eastern district of Louisiana, in the city of New Orleans, in ten days after the service hereof, or judgment will be rendered against him by default; which delay is increased one day for every twenty miles the defendant's residence is distant from New Orleans, the place where the court is held.

Witness the honorable R. B. Taney, chief justice of the Supreme Court of the United States of America, at the city of New Orleans, in the said eastern district of Louisiana, this 17th day of [L. S.] April, in the year of our Lord one thousand eight hundred and forty-one, and of the independence of the said United States of America the sixty-fifth year.

Signed, DUNCAN N. HENNEN, *Cl'k.*

Marshal's return.

Received 17th April, 1841, and on the same day I served a copy of the within citation, together with a certified copy of plaintiff's petition, and documents annexed, on the within named defendant, Andrew Hodge, in person, at New Orleans.

Signed, M. MARIGNY, *U. S. M.*
By WM. K. STILES,
D. U. S. Marshal.

And on the same day and year aforesaid the following citation was also issued, to wit:

The President of the United States of America, to the marshal of the eastern district of Louisiana, or his lawful deputy, greeting:

THE UNITED STATES OF AMERICA
vs.
ANDREW HODGE, JR., & LEVI PIERCE.

To Levi Pierce: You are hereby commanded to summon Levi Pierce, and you, Levi Pierce, are hereby cited to comply with the demand contained in the petition, of which a copy accompanies this citation, or deliver his answer to [ ] in the office of the clerk of the circuit court of the United States, ninth judicial circuit and eastern district of Louisiana, in the city of New Orleans, in ten days after the service hereof, or judgment will be rendered against him by default; which delay is increased one day for every twenty miles the defendant's residence is distant from New Orleans, the place where the court is held.

Witness the honorable R. B. Taney, chief justice of the Supreme Court of the United States of America, at the city of New Orleans, in the said eastern district of Louisiana, this 17th day of [L. S.] April, in the year of our Lord one thousand eight hundred and forty one, and of the independence of the United States of America the sixty-fifth year.

Signed, DUNCAN N. HENNEN, *Cl'k.*

Marshal's return.

Received 17th April, 1841; same day I served a copy of the within citation, together with a certified copy of the plaintiff's petition, and other documents annexed, on the within named defendant, Levi Pierce, by leaving the same at his office with Mr. George Christi, which papers have been since acknowledged to me to have been received by Mr. Levi Pierce.

Signed, M. MARIGNY, *U. S. Marshal.*
By D. O. NADAND,
D. U. S. Marshal.

And afterwards, to wit, on the 28th April, 1841, the following answer was filed:

UNITED STATES
vs.
A. HODGE & LEVI PIERCE. } United States circuit court—No. 824.

The said Andrew Hodge and Levi Pierce, by their attorneys, come into court, and deny that they are indebted to the said plaintiffs in manner and form as in their petition is set forth, and pray to be hence dismissed with costs. And for further answer, permission of the court being first had and obtained, say that they admit the execution of the said bond, or writing obligatory, sued on, but deny specially that the said William H. Ker is indebted to the said plaintiffs, as in their said

petition is set forth; and that if the said William H. Ker was at any time, since the execution of the said bond, indebted to the said plaintiffs as postmaster, (which said defendants deny,) then, and in that case, they, the said defendants, being mere securities of the said William H. Ker, are released and discharged from all responsibility and indebtedness accruing under said bond, by reason of the acts and doings of the plaintiffs, to wit: That on the 15th August, 1839, in the city of New Orleans, by public act passed before Henry B. Cenas, notary of the city of New Orleans, the following agreement, contract, and mortgage was entered into, and executed, between William H. Ker, postmaster of the city of New Orleans, Charles M. Conrad and Christopher Adams, jr., of said New Orleans, of the same part, and Amos Kendall, Postmaster General of the United States of America, and his successors in office, represented herein by John Marron, of the city of Washington, District of Columbia, present and accepting for the said Kendall, and his successors in office, of the other part, to wit: the said William H. Ker declared that he was indebted unto the United States of America, for the use of the Post Office Department, in a sum not then known, but which would be ascertained by a settlement of his accounts with the said department, then under investigation in the office of auditor of the said department, which indebtedness, however, could not exceed the sum of sixty-five thousand dollars. Now, therefore, in order to secure the punctual payment *of* the said Post Office Department of the said sum of sixty-five thousand dollars, or the amount *of* which the indebtedness of the said appearer might be reduced on the settlement of his accounts, at any time when thereunto required, *from and after six months from the date of these presents*, he, the said appearer, (Ker,) moreover declared that he did specially mortgage and hypothecate unto Amos Kendall, Postmaster General of the United States of America, and his successors in office, herein represented by John Marron, of the city of Washington, in the District of Columbia, here present, and accepting for the said Kendall, and his successors in office, the following described property and slaves, to wit:

1st. A tract of land situate in the parish of Livingston, in this State, having a front of sixteen acres on the river Tickfaw, bounded on the north by lands owned by Jose Johnson, on the west by vacant lands owned or claimed by L. G. Parsons, containing about six hundred and forty acres, being the tract usually called the "Rome tract."

2d. And also another small tract, on said river, immediately opposite to the one first described, being lot number 2, of section number one, of townships Nos. 8 and 9 south, of range 6 east, and containing thirty $\frac{20}{100}$ths acres, together with all and singular the buildings and improvements on said two tracts of land.

3d. And also the following slaves, employed on said property, to wit: *Jim*, a negro man, sawyer, aged 35 years; Cupid, do. do. 25 years; *John*, do. engineer, 19 years; Peter, mulatto, do. 25 years; Ketty, negro woman, 25 years; Mary, do. 27 years, with her two male children, one aged about five years, and the other about two years; and Kate, a negro woman, aged about 25 years, with an infant male child.

4th, and lastly, the following slaves now in this city:

Alexander, a negro man, carpenter, now in this city, aged about 25 years; *Elsey*, a negro woman, aged about 25 years, a seamstress; Peggy, do. cook, 28 years; Mary Ann, aged about 13 years; Susan, 8 years; Sarah, 6 years; Henry, 10 years; all children of Peggy. Mary, a washerwoman, aged about 26 years; her children—*Susan*, aged about 6 years, and an infant male child, about 6 months old; *Andrew*, a negro man, aged about 30 years: the said William H. Ker promising and binding himself not to alienate, deteriorate, or encumber the said property and slaves to the prejudice of this mortgage; and the said Ker, moreover, declared that there were no other encumbrances existing upon the said property and slaves than a general mortgage in favor of his minor children, which is now in process of settlement, and will be reduced as soon as possible; and the mortgage in favor of Charles M. Conrad and Christopher Adams, junior, resulting from an act passed before Amédée Ducatel, a notary public of this city, on the fourth day of May, 1839; and further, that he would procure, as speedily as practicable, certificates from the recorder of mortgages for this parish, and the said parish of Livingston, showing the actual state of the morgages upon the property, and attach the same to this act, as required by articles 3328 of the civil code of this State.

And the said John Marron declared that he dispensed with the present production of said certificates, holding the said Ker bound to produce them hereafter, and releasing the said notary of all responsibility or liability in the premises.

And personally appeared the said Charles M. Conrad and Christopher Adams, jr., both of this city, who intervened in these presents, and having read what was above written, declared, that they hereby bound themselves to cancel the mortgage in their favor, as above mentioned, as soon as they shall have received intelligence of the payment of certain warrants, being numbers 610, 609, 617, and 9576, drawn on the said Ker by the Post Office Department for settlement, which mortgage, contract, and agreement, was done and passed in the office of said notary, in the city of New Orleans, in the presence of L. Doran and E. Granet, witnesses, who thereunto signed their names, with the said appearers and said notary, on the fifteenth day of August, 1839. All of which was done according to the laws of Louisiana, by the most formal and solemn instruments to said laws known, and having the highest authority; and for greater certainty, respondents refer to an authenticated copy of said act, on file in this court, in the suit of The United States *vs*. Defendants, being No. 546, and pray the same to be considered part of this answer.

And these respondents show that the said contract and agreement was made without their knowledge or consent, nor have they ever consented thereto. And that afterwards, to wit, after the execution of the said instrument heretofore recited, and after the delay granted without the consent or knowledge of these respondents, and after the said Ker had ceased being postmaster, to wit, subsequent to the 18th of August,

1839, the said act of transaction, agreement, and mortgage was *only* recorded by the said Postmaster General, in the parish of Livingston, and the city of New Orleans, and an authenticated copy of said act delivered, and report of said actings and doings made to the said Postmaster General, and ratified and confirmed by him, and a delay or term of payment was actually given, according to the conditions of said act, by the said plaintiffs to the said William H. Ker, for the debt then alleged to be due from said William H. Ker, as postmaster, to the said plaintiffs. By reason of all which, the said defendants stand released and discharged from all indebtedness to the said plaintiffs, in consequence of said bond, executed by them, as the securities of said William H. Ker; on all which the said defendants pray judgment, and for a trial by jury.

Signed, GEO. EUSTIS.

And afterwards, to wit, on the 31st day of May, A. D. 1842, the following supplemental petition was filed, to wit:

CIRCUIT COURT OF THE UNITED STATES:

THE UNITED STATES OF AMERICA
vs.
LEVI PIERCE and A. HODGE, JR. } No. 824.

The said plaintiffs, by this their supplemental petition, herewith file the transcript, hereto annexed, with all the accompanying documents, and aver that they are evidences of the debt demanded in their petition herein filed.

They pray that said transcript and documents be considered as legal evidence herein, and that this supplemental petition be considered as part of said original petition; that said defendants be cited accordingly, and be condemned as already prayed for.

Signed, BALIE PEYTON,
U. S. Att'y E. Dist. Louisiana.

And on the same day and year aforesaid, the following citation was issued, to wit:

The President of the United States of America to the marshal of the eastern district of Louisiana, or his lawful deputy, greeting:

THE UNITED STATES OF AMERICA
vs.
LEVI PIERCE and A. HODGE, JR.

Citizen of the State of Louisiana, to comply with the demand of the United States, as contained in the supplemental petition, of which a copy accompanies this citation, or deliver his answer to the same, in the office of the clerk of the circuit court of the United States, ninth judicial circuit, and eastern district of Louisiana, in the city of New Orleans, in ten days after the service hereof, or judgment will be rendered against him by default, which delay is increased one day for every ten miles the defendant's residence is distant from New Orleans, the place where

the court is held, and that you make due return hereof on the first Monday of July, 1842.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States of America, at the city of New Orleans, in the said eastern district of Louisiana, this 31st day of [L. S.] May, in the year of our Lord one thousand eight hundred and forty-two, and of the independence of the United States of America the sixty-sixth year.

Signed, DUNCAN N. HENNEN, *Clerk*.
By H. B. PAGE, *Deputy Clerk*.

Marshal's return.

Received this 31st day of May, 1842, and on the 31st May, 1842, served copies of the within citation, plaintiffs' petition, and documents annexed, on the within named Andrew Hodge, in the manner following, to wit, by handing the same to him in person.

Signed, A. SIDNEY ROBERTSON, *U. S. M.*
By WM. K. STILES, *D. U. S. M.*

NEW ORLEANS.—Returned 15th June, 1842.

And afterwards, to wit, on the 7th June, 1842, the following exception to the supplemental petition was filed:

CIRCUIT COURT UNITED STATES:

THE UNITED STATES
vs.
L. PIERCE and A. HODGE, JR.

The defendants except to the supplemental petition, that *their* are not additional allegations or averments; and that, whether there be legal evidence or not, to charge these defendants, can only be enquired of at the trial; and that these defendants are not bound to answer the said supplemental petition, which they pray may be dismissed with costs.

Signed, LEVI PEIRCE,
GEO. EUSTIS.

And afterwards, to wit, on the 7th February, 1843, the following order of court was entered of record, to wit:

TUESDAY, *February 7th*, 1843.

The court met pursuant to adjournment.

Present, the honorable Theodore H. McCaleb, district judge; honorable John McKinley, presiding judge, absent.

THE UNITED STATES
vs.
PIERCE & HODGE. } No. 824.

This cause came on for trial this day; Balie Peyton, esquire, the district attorney, appearing for the plaintiffs, and J. R. Grymes and George Eustis, esquires, for the defendants; and, thereupon, there came a jury, to wit:

[REC. CVIII, D. T. 1845.]—2

Charles Fondi,	James Roach,
John Cumminger,	William McCauley,
J. L. Wilbray,	John Chaigneau,
H. Kidel,	A. H. Clayton,
V. Sheldon,	John Wilcox,
Geo. M. Lee,	James A. Watson,

who were sworn well and truly to try the issue joined between the parties, and a true verdict give, according to law and the evidence; when, after some considerable progress in the trial, the case, on the suggestion of the court, the hour of three o'clock having arrived, was continued over until to-morrow, the 8th instant, at 10 o'clock, A. M.

And afterwards, to wit, on the 8th February, 1843, the following order of court was entered of record, to wit:

WEDNESDAY, *February 8th*, 1843.

The court met pursuant to adjournment.

Present, the honorable Theodore H. McCaleb, district judge; the honorable John McKinley, presiding judge, absent.

THE UNITED STATES vs. HODGE & PIERCE. } No. 842.

The trial of this cause was this day resumed before the court and jury already sworn—the district attorney appearing for the plaintiffs, and G. Eustis and J. R. Grymes, esquires, for the defendants; whereupon, after some considerable progress, the cause was ordered to be continued over until to-morrow at 10 o'clock, A. M.

And afterwards, to wit, on the 9th February, 1843, the following order of court was entered of record, to wit:

THURSDAY, *February 9th*, 1843.

The court met pursuant to adjournment.

Present, the honorable Theodore H. McCaleb, district judge; honorable John McKinley, presiding judge, absent.

THE UNITED STATES vs. HODGE & PIERCE. } No. 842.

The trial of this cause was this day resumed before the court and the jury heretofore sworn; whereupon, after some considerable progress, the case was continued until to-morrow at 10 o'clock, A. M.

And afterwards, to wit, on the 10th February, 1843, the following order of court was entered of record, to wit:

FRIDAY, *February 10th*, 1843.

The court met pursuant to adjournment.

Present, the honorable Theodore H. McCaleb, district judge; honorable John McKinley, presiding judge, absent.

THE UNITED STATES
vs.
HODGE & PIERCE. } No. 824.

This case was this day resumed before the court and the jury heretofore sworn; whereupon, after considerable progress, the case was continued until to-morrow at 10 o'clock, A. M.

And afterwards, to wit, on the 11th February, 1843, the entry was made of record, to wit:

SATURDAY, *February* 11*th*, 1843.

The court met pursuant to adjournment.

Present, the honorable Theodore H. McCaleb, district judge; the honorable John McKinley, presiding judge, absent.

THE UNITED STATES
vs.
HODGE & PIERCE. } No. 824.

The trial of this cause was this day resumed before the court and the jury heretofore sworn; J. R. Grymes and George Eustis, esquires, appearing for the defendants, and Balie Peyton, esquire, the district attorney, for the plaintiffs; whereupon, the evidence and arguments of counsel being closed, the jury retired to their room, under the charge of the court, to consider of their verdict; and, after an absence of some time, returned with the following, which was ordered to be recorded, and is in the words and figures following, to wit:

"Verdict for the defendants.

Signed, WM. McCAULEY, *Foreman.*"

NEW ORLEANS, *Feb'y* 11*th*, 1843.

Whereupon, it was considered by the court, that the plaintiffs, the United States of America, take nothing by their petition, and that judgment be entered up in favor of the defendants, Andrew Hodge, jr., and Levi Pierce; and thereupon the attorney for the United States moved for a new trial.

And afterwards, to wit, on the 1st April, 1843, the following order of court was entered of record, to wit:

SATURDAY, *April* 1*st*, 1843.

The court met pursuant to adjournment.

Present, the honorable Theodore H. McCaleb, district judge.

Honorable John McKinley, presiding judge, absent.

UNITED STATES
vs.
LEVI PIERCE and ANDREW HODGE, JR. } No. 824.

The court having considered the motion for a new trial, heretofore made in this case, does now order, adjudge, and decree that the same be overruled, and a rehearing refused.

Evidence.—Bond.—Exhibit B.

CIRCUIT COURT U. S.

UNITED STATES vs. PIERCE & HODGE. } No. 824.

Know all men by these presents, that we, William H. Ker, of New Orleans, in the parish of Orleans, State of Louisiana, and Levi Pierce and Andrew Hodge, jr., both also of the aforesaid parish of Orleans, are held and firmly bound unto the United States of America in the just and full sum of twenty-five thousand dollars; for the payment whereof, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

In witness whereof, we have hereunto subscribed our names and affixed our seals, this nineteenth day of December, in the year of our Lord one thousand eight hundred and thirty-six.

The condition of this obligation is such, that whereas the above bounded William H. Ker is postmaster at New Orleans aforesaid, now, if the said William H. Ker shall well and truly execute the duties of said office according to law and the instructions of the Postmaster General, and faithfully, once in three months, and oftener if thereto required, render accounts of his receipts and expenditures as postmaster, to the General Post Office, in the manner and form prescribed by the Postmaster General in his several instructions to postmasters, and shall pay the balance of all moneys that shall come to his hands, for the postage of whatever is, by law, chargeable with postage, in the manner prescribed by the Postmaster General of the United States for the time being; and shall also faithfully do and perform, as agent for the Post Office Department, all such acts and things as may be required of him by the Postmaster General; and, moreover, shall faithfully account with the United States, in the manner directed by the said Postmaster General, for all moneys, bills, bonds, notes, receipts, and other vouchers, which he, as agent as aforesaid, shall receive for the use and benefit of the said Post Office Department, then the above obligation shall be void.

Signed, WM. H. KER, [L. S.]
LEVI PIERCE, [L. S.]
A. HODGE, JR. [L. S.]

Witness: T. R. HYDE,
H. B. CENAS.

I certify that Andrew Hodge, jr., and Levi Pierce, are good and sufficient sureties, severally, for the amount of the penalty in the foregoing bond.

Signed, EDWARD RAWLE,
Judge City Court.

I certify that the foregoing transcript is a true copy of the official bond of Wm. H. Ker, now on file in this office.

In testimony whereof, I have hereunto subscribed my name, and caused to be affixed my seal of office, this nineteenth day of November, in the year one thousand eight hundred and thirty-nine.

[L. S.]

Signed, C. K. GARDNER, *Auditor of the Treasury for the Post Office Department.*

Oath of Wm. H. Kerr, as Postmaster at New Orleans.

Exhibit "C."

UNITED STATES, vs. PIERCE & HODGE. } Circuit Court U. S.

I, William H. Ker, being appointed postmaster at New Orleans, in the parish of New Orleans, and State of Louisiana, *due* swear that I will faithfully perform all the duties required of me, and abstain from every thing forbidden by the laws, in relation to the establishment of post offices and post roads with the United States; and I do solemnly swear that I will support the Constitution of the United States.

Signed, WM. H. KER.

Sworn before the subscriber, E. Rawle, associate judge of the city court for the city of New Orleans, this nineteenth day of December, A. D. 1836.

Signed, EDWARD RAWLE, *Judge.*

I certify that the foregoing transcript is a true copy of the official oath of Wm. H. Ker, now on file in this office.

In testimony whereof, I have hereunto set and subscribed my name, and caused to be affixed my seal of office, this nineteenth day of November, in the year one thousand eight hundred and thirty-nine.

[L. S.]

Signed, C. K. GARDNER, *Auditor of the Treasury for the Post Office Department.*

Defd'ts testimony.—Exhibit "A."

Mortgage of Ker to Kendall.

Mortgage by William H. Ker to Amos Kendall, postmaster of the United States.

15th AUGUST, 1839.

STATE OF LOUISIANA,
City of New Orleans:

Be it known, that this day, before me, Hilary Breton Cenas, a notary public in and for the city and parish of New Orleans, State of Louisiana aforesaid, duly commissioned and qualified, personally came and appeared William H. Ker, esq., postmaster in and for this city, who declared, that whereas he is indebted unto the United States of Ameri-

ca, for the use of the Post Office Department, in a sum not at present known, but which will be ascertained by a settlement of his accounts with the said department, now under investigation in the office of the auditor of the said department; which indebtedness, however, cannot exceed the sum of sixty-five thousand dollars.

Now, therefore, in order to secure the punctual payment to the said Post Office Department of the said sum of sixty-five thousand dollars, or of the amount to which the indebtedness of the said appearer may be reduced, on the settlement of his accounts, at any time when thereunto required, from and after six months from the date of these presents, he, the said appearer, moreover declared, that he does hereby specially mortgage and hypothecate unto Amos Kendall, Postmaster General of the United States of America, and his successors in office, herein represented by John Marron, esq., of the city of Washington, in the District of Columbia, here present, and accepting for the said Kendall, and his successors in office, the following described property and slaves, to wit:

1st. A tract of land situate in the parish of Livingston, in this State, having a front of sixteen acres on the river Tickfau; bounded on the south by lands owned by Jos. Johnson, on the west by vacant lands, owned or claimed by S. G. Parsons, containing about six hundred and forty acres, being the tract usually called the "Rome tract."

2d. And also another small tract on said river, immediately opposite to the one first described, being lot No. 2, of section No. 1, of Township Nos. 8 and 9 south, of range six east, and containing thirteen $\frac{20}{100}$ acres; together with all and singular the buildings and improvements on said two tracts of land.

3d. And also the following slaves employed on said property, to wit:

Jim, a negro man, aged thirty-five years—sawyer
Cupid, do. do. twenty-five "
John, do. do. nineteen " engineer.
Peter, a mulatto do. twenty-four " "
Ketty, a negro woman, aged twenty-five "
Mary, do. do. twenty-seven years, with 2 male children, one aged about five years, and the other about two years; and

Kate, a negro woman, aged about twenty-five years, with an infant male child.

4th and lastly. The following slaves, now in this city, to wit:

Alexander, a negro man, carpenter, aged about 25 years.
Elsey, a negro woman, seamstress, 25 "
Peggy, do. do. cook, 28 "
Mary Ann, aged about thirteen years,
Susan, do. eight years,
Sarah, do. six years,
Henry, do. ten years,
} Children of Peggy.

Mary, a washerwoman, aged about 26 years, and her children, Susan, aged about six years, and an infant male child, about six months old; and Andrew, a negro man, aged about 30 years.

The said William H. Ker hereby promising and binding himself, not to alienate, deteriorate, or encumber the said property and slaves, to the prejudice of this mortgage.

And the said Ker moreover declared, that there are no other incumbrances existing on the said property and slaves, than a general mortgage in favor of his minor children, which is now in process of settlement, and will be reduced as soon as possible, and the mortgage in favor of Charles M. Conrad and Christopher Adams, jr., resulting from an act passed before Amédée Ducatel, a notary public, in this city, on the fourth of May, 1839; and further, that he will procure, as speedily as practicable, certificates from the recorder of mortgages for this parish and the said parish of Livingston, showing the actual state of the mortgages upon said property and slaves, and attach the same to this act, as required by the article "3,328" of the civil code of this State; whereupon the said John Marron declared that he dispensed with the present production of such certificates, holding the said Ker bound to produce them hereafter, and releasing me, said notary, from all responsibility or liability in the premises.

And now personally came and appeared the said Charles M. Conrad and Christopher Adams, junior, both of this city, who, intervening in these presents, and having read what is above written, declared that they hereby bind themselves to cancel the mortgage in their favor, as above mentioned, so soon as they shall have received intelligence of the payment of certain warrants, Nos. 610, 609, 617, and 9,576, drawn on the said Ker by the Post Office Department of the United States, and recently transmitted to said department for settlement.

Thus done and passed in my office, at the said city of New Orleans, in the presence of L. Dooner and E. Grant, witnesses, who hereunto sign their names, with the said appearers and me, said notary, on the fifteenth day of August, eighteen hundred and thirty-nine.

Original signed Wm. H. Ker, John Marron, C. M. Conrad, C. Adams, jr., E. Ganet, L. Dornon, H. B. Cenas.

I certify the foregoing to be a true copy of the original act extant in my current notarial register. In faith whereof, I grant these presents under my signature and the impress of my seal of office, at New Orleans, this 31st day of March, 1840.

Signed, H. B. CENAS, *Not. Pub.*

THE STATE OF LOUISIANA,
Parish of Livingston:

I hereby certify, that an authentic copy of the foregoing act of mortgage was duly registered in my office, mortgage register, book E, pages 108, '9, and '10, on the twenty-fourth day of August, eighteen hundred and thirty-nine; and I further certify, that on the day of said record there existed no liens or mortgages of record, in my office, other than the one in favor of Charles M. Conrad and Christopher Adams, jr., of New Orleans, as per act passed before A. Ducatel, notary public, of New Orleans, on the fourth day of May, eighteen hundred and thir-

ty-nine, and recorded in my office on the tenth day of June, of same year, upon the property and slaves described in the foregoing act of mortgage, to secure the payment—1st. The sum of ($5,000) five thousand dollars, and eventual revenue thereon, either in whole or in part, after maturity. 2nd. Two liens, each of the amount of ($3,199 $\frac{23}{100}$) thirty-one hundred and ninety-nine $\frac{23}{100}$ dollars. And 3rd. To secure an eventual interest, at the rate of eight per centum per annum, on all such sums of money which, as endorsers, said Conrad & Adams might advance or disburse for said Ker.

In testimony whereof, I have hereunto signed my name and set the [L. S.] seal official, this ninth day of April, A. D. eighteen hundred and forty.

Signed, BURLIN CHILDRESS, *P. J.*
and ex-officio Recorder of Mortgages.

OFFICE OF MORTGAGES.

The undersigned, recorder of mortgages for the parish and city of New Orleans, State of Louisiana, certifies, that in the records in his office there is no other mortgages standing in the name of William Harvey Ker, and recorded against Alexander, a negro man, of 35 years, carpenter; Elsey, negro woman, seamstress, 25 years; Peggy, negro woman, cook, of 28 years; Mary Ann, of 13 years; Susan, of 8 years; Sarah, of six years; and Henry, of ten years, the children of Peggy; Mary, a washerwoman, of 26 years, and her children, Susan, of 6 years, and an infant boy of 6 months—

Than 1st. The one granted per act before A. Ducatel, notary, dated the 4th of May, 1839, on the above named slaves, and other landed property and slaves therein mentioned, in favor of Charles M. Conrad and Christopher Adams, jr., to secure eleven thousand three hundred and ninety-eight dollars and forty-six cents, and interest thereon at 8 per cent. per annum, as more fully mentioned in said act, ($11,398 46).

2nd. The one he granted, per act before H. B. Cenas, notary, dated 15th August, 1839, on the above mentioned slaves and other property, in favor of Amos Kendall, Postmaster General of the United States, and his successors in his office, represented by John Marron, esq., to secure the sum of sixty-five thousand dollars, ($65,000).

3rd. The one he granted, per act before William Boswell, notary, dated the 21st November, 1837, on the negro named Alexander, above described, in favor of Aaron Camplin, to secure twelve hundred dollars, ($1,200.)

P. LAMREAN, *Reg'r.*

NEW ORLEANS, *the 15th December* 1839.

I, the undersigned notary, do hereby certify the foregoing to be a true copy of the original certificate annexed to an act of mortgage from William H. Ker to Amos Kendall, P. M. General, passed before me on the fifteenth day of August, eighteen hundred and thirty-nine.

In faith whereof, I hereunto set my hand, and affixed my seal of office this eleventh day of April, 1840.

[L. S.] Signed, H. B. CENAS.

Exhibit "E."

Testimony of Amos Kendall and others.

CIRCUIT COURT OF THE UNITED STATES,

For the eastern district of Louisiana, ninth judicial circuit:

To any judge or justice of the peace in the District of Columbia.

Know ye, that reposing special trust and confidence in your integrity and ability, we hereby authorize and require you, that you call, and cause to come before you, certain witnesses, and them duly examine, on oath, touching and concerning certain matters and things in a cause now depending in the said court, wherein the United States are plaintiffs, and Hodge & Pierce are defendants; and the same examinations, so taken and reduced to writing, you certify under your hand and seal, and send enclosed to this court, without delay, to be read in evidence on the trial of said cause, and send also this writ.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, at the city of New Orleans, this [L. S.] 27th day of January, anno domini 1840, and the 64th year of the independence of the United States of America.

UNITED STATES CIRCUIT COURT.

UNITED STATES
vs.
A. HODGE, Jr., and LEVI PIERCE.

Circuit court of the ninth circuit, eastern district of Louisiana.

Interrogatories to be propounded to Amos Kendall and other witnesses, to be examined on the part of the defendants.

1st. Do you know John Marron, and how long have you known him?

2d. What is his occupation? is he now, and was he on the 15th day of August, 1839, or at any time before or since, employed in, or in any manner attached to, the General Post Office Department? Set forth what situation he held in said department, or in what capacity he was employed. Set forth your whole knowledge in relation to all the matters of this interrogatory.

3d. Was he not despatched from Washington to New Orleans, some time last summer, on business of the General Post Office Department, and did he not go to New Orleans on the business of said department; and what was the nature of that business, and the purpose of his visit to New Orleans? Had it any relation to the settlement of the accounts of W. H. Ker, late postmaster at New Orleans, or to the recovery or securing any balance that might be due by him to the General Post Office, or the United States, in his official capacity as postmaster at New Orleans? Were any instructions given to him on that subject? If yea, set forth fully and at large what were such instructions, and furnish and attach to your answer true and full copies of all and every the instructions so given him by the General Post Office Department.

4th. When did the said John Marron return to Washington from New Orleans, and what report did he make on his return to Washing-

ton relative to his proceedings in New Orleans, and in relation to the settlement of the accounts and securing of balance due by said W. H. Ker, as set forth in the preceding interrogatory, and annex a true copy thereof to your answer.

5th. Did the said John Marron, while at New Orleans, or elsewhere, during his absence from Washington, correspond with the department on the subject of the said accounts, the settlement or securing the balance due on the same? If yea, set forth particularly and at large what that correspondence was, to what effect, and furnish and annex to your answer a true copy or copies of all letters, correspondence, or reports so made by him.

6th. Did he at any time report to, or exhibit or deliver to, the General Post Office Department, any act or document relating to said balance, or in any manner intended to secure the same? If yea, set forth when and what was the nature and purport of said document. If the same is now in the possession of the department, annex a copy to your answer; if not, state where it is, and what disposition the department has made of it?

7th. Did you not, or the General Post Office Department, correspond with the said W. H. Ker, late postmaster at New Orleans, on the subject of his accounts, and the balance due thereon, and for which he was in default, and on the subject of the mission of the said John Marron to New Orleans? Was the said Ker informed of the mission of the said John Marron, by letters from you, or the department, or any one attached to it? If yea, when, how, and by what conveyance. Was the said John Marron charged with any letters to the said Ker? If you answer in the affirmative to any or all of the foregoing inquiries, then furnish and annex copies of all such correspondence and letters, and set forth your whole knowledge at large, and in particular.

(Signed) LEVI PEIRCE.

The plaintiffs, reserving all legal exceptions, decline propounding any cross interrogatories.

Signed, THOMAS SLIDELL,
U. S. Att'y for Eastern Dist. La.

New Orleans, January 22, 1840.

UNITED STATES OF AMERICA, *Department of State.*

To all to whom these presents shall come, greeting:

I certify that B. Thruston, whose name is subscribed to the annexed paper, being a process verbal of the execution of the annexed commission, is now, and was at the time of executing the same, one of the assistant judges of the circuit court of the District of Columbia, duly commissioned, and that full faith and confidence are due to his acts as such.

In testimony whereof, I, John Forsyth, Secretary of State of the United States, have hereunto subscribed my name, and caused the seal of the Department of State to be affixed.

[L. S.]

Done at the city of Washington, this twenty-sixth day of March, A. D. 1840, and of the independence of the United States of America the sixty-fourth.

Signed, JOHN FORSYTH.

THE UNITED STATES, plaintiffs,
vs.
HODGE & PIERCE, defendants.

In a certain cause depending in the circuit court of the United States, for the ninth judicial circuit and eastern district of Louisiana—

The deposition of Amos Kendall, Postmaster General of the United States, a witness on part of the defendants, in the said cause, called and examined at the city of Washington, in the District of Columbia, on the 23rd day of March, 1840, (in virtue and pursuance of the annexed commission from the said court,) before the honorable Bucknor Thruston, one of the judges of the circuit court of the said District of Columbia; and the said witness having been first carefully examined and cautioned and sworn, by the judge aforesaid, to testify the whole truth, and being especially examined on the interrogatories annexed to said commission, doth now here, at the time and place aforesaid, upon such his examination and oath, testify and depose in the words following, to wit:

Answer to question 1st. I have known John Marron about 5 years.

Answer to question 2d. He is now, and was on the 15th August, 1839, chief clerk to the Post Office Department.

Answer to question 3d. He was sent to New Orleans in July, 1839, for purposes set forth in the copy of instructions hereto annexed, dated July 23d, 1839. His mission had no relation to the settlement of the postmaster's account, the power to settle such accounts not being vested by law in the Postmaster General, or any officer or clerk dependant on him, but in the Auditor of the Treasury for the Post Office Department. He was sent in consequence of a letter from the postmaster acknowledging his inability to pay moneys admitted to be due, and for the purpose of ascertaining the condition of the office, making the amount due available if practicable, aud if not, procuring additional security, as it was apprehended that amount would not exceed the penalty of his official bond. The copy of instructions referred to above is marked (A.)

Answer to question 4th. Mr. Marron returned from New Orleans early in September; the only reports made by him, not oral, are contained in his letters from New Orleans, dated 15th August, 1839, and from Mobile, dated the 18th of the same month; copies of which are hereto annexed (B and C;) and in a deed of trust executed by Wm. H. Ker in favor of the United States, for certain lands and negroes, a certified copy of which, from the office of the Auditor of the Treasury for the Post Office Department, is hereunto annexed, marked (D.) He made no report relative to the settlement of the postmaster's account.

Answer to question 5th. The papers annexed to the preceding answer embrace all Mr. Marron's correspondence and reports upon the subject.

Answer to question 6th. The paper annexed to answer to question No. 4th, marked (D,) is a copy of the only act or document relating to the amount due from Mr. Ker, late postmaster at New Orleans, and intended to secure the same, which was reported or exhibited by Mr. Marron. It was referred to the office of the auditor, whose official duty it was to ascertain the precise balance due, and attend to its collection.

Answer to question the 7th. The annexed papers, marked (E and F,) are copies of the only letters written by me, or the department, to Wm. H. Ker, late postmaster at New Orleans, on the subject of his default, and the mission of Mr. Marron. The former was sent by mail, and the latter by Mr. Marron.

Signed, AMOS KENDALL.

Done before me, this 23d March, 1840.

Signed, B. THRUSTON.

Copy—(A.)

POST OFFICE DEPARTMENT, *July* 23, 1839.

JOHN MARRON, esq., Chief clerk, &c.:

Information recently received from the postmaster at New Orleans makes necessary *and* immediate investigation into the affairs of his office. You will repair forthwith to New Orleans for that purpose.

Herewith is a copy of the postmaster's bond, and a letter to the postmaster himself.

Without making public the object of your mission, or naming it to any other person, you will call on the postmaster, deliver the letter to him, and, by every consideration which may occur to you, induce him to make instant preparation to discharge his debt to the Department.

If he will not, and cannot, make such arrangements, you will seek out his sureties, and, if practicable, induce them to make the necessary provision.

If, after the most strenuous efforts, you shall not be able to effect an arrangement by which these funds shall be immediately available, you will endeavor to induce the postmaster, or his sureties, to assign over to the United States property abundantly sufficient to cover the debt, or indeed any amount that can be obtained.

If unsuccessful with both *both* principal and sureties, or if you cannot secure money or property enough to cover the debt, you will use the power vested in you by the enclosed authority and mandamus, to take possession of the office and place it in other safe hands, until the pleasure of the President shall be known.

In any arrangement made with the postmaster or his sureties, you will take care to give no pledge as to the future disposition of the post office, explicitly stating, that it must be held, as it always has been, at the will of the President, without pledge or understanding as to time; and that no promise of forbearance is intended to be made, as an inducement to them to discharge their obligations to the public.

You will not leave New Orleans until arrangements be made to pay or to secure the debt, or the post office be placed in other hands.

Please to report progress, from time to time. You will hear further from the department at New Orleans.

Very respectfully, your obedient servant,

Signed, AMOS KENDALL.

Copy—(B)—Private.

NEW ORLEANS, *15th August*, 1839.

DEAR SIR: I arrived here at 9 P. M. of the 13th, and was yesterday busily engaged in looking into Mr. Ker's accounts, &c. I regret to find matters much worse than I anticipated. His whole indebtedness to the Department will reach $62,000. There are $33,246 39 of drafts upon him outstanding, and unpaid. Dft. No. 5,923, for $12,100, is in the hands of one of the banks here, (the Bank of Orleans,) only $2,000 of it having been paid by the postmaster, although he reported it to the auditor as paid in full. Three other drafts, amounting to $6,898 47, have recently been taken up by his friends, who have secured themselves by a mortgage on his property. He has no cash on hand, and the daily receipts of the office *has* been very light since the discontinuance of the express mail.

To-day I am to have executed to the Postmaster General, for the use of the United States, a mortgage on Ker's property, consisting of a saw-mill, and some land in Covington, La., and some twenty negroes on the place. This is all I can get, and I have to take it, subject, of course, to the previous incumbrance granted by him to his friends, to secure them in having taken up our drafts as above noticed. I have kept it as still as possible, for fear his sureties would push for a conveyance of his property to them. It is possible some private arrangement has been made for their benefit, but I cannot learn that there has, nor do I think such is the case. So far as I know, Mr. Ker's conduct has been that of a man sincerely disposed to atone for his fault, as far as he could, by making all the restitution in his power.

I hope to get all things fixed to-day, as effectually as I can fix them, and will go over to Mobile to-morrow, from which place you shall hear from me.

I am, sincerely, your friend,

Signed, JOHN MARRON.

Hon. AMOS KENDALL, Postmaster General.

Copy—(C.)

MOBILE, *Sunday*, 18*th August*, 1839.

SIR: on arriving at New Orleans, on the evening of the 13th instant, I prepared myself to wait on Mr. Ker, the postmaster, early the following morning. We met, and had, together, an investigation of his accounts with the department. My accounts and estimates showed him indebted on the 4th inst., the date of his last weekly report, in the sum of $60,907 46, after deducting all the drafts of the Department outstanding and unpaid. To make ultimately good this large deficit, we hold his official bond, which is perfectly good, for $25,000; and a

mortgage on 640 acres of land on Tickfau river, in the parish of Livingston, upon which there is a valuable saw-mill, 7 valuable slaves, (4 men and 3 women,) besides three male children; also a lot of $13\frac{20}{100}$ acres of land, adjoining the above, and three negro men, six women, and two children in New Orleans. Mr. Ker values all this property at $40,000 to $50,000; and Mr. McQueen, who was under the impression that Ker was short about $20,000 only, said that his property was good for a much larger sum. Be that as it may, the above cited property *was all I could get*. He has made some other purchases of property, on credit, but those who sold it retained liens to secure themselves.

Of the outstanding drafts, please to take notice, particularly, that No. 5923, for $12,100, dated 11th August, 1838, has not been paid by the postmaster, though it was so reported by him. He did, as I understand, pay $2,000 on that draft; but the balance was paid by one of the officers of the Bank of Orleans, who has held up the draft *without notice to the department*, and thereby made himself liable, without recourse to the drawer, or, in other words, has thereby lost his recourse upon the drawer. Drafts No. 9576, 609, 610, and 617, amounting to $11,574 $\frac{52}{100}$, were taken up under protest by J. Adams, jr., president of the Union Bank, and F. B. Conrad, who secured themselves by a mortgage on the same property now mortgaged to the department, and which mortgage will be null so soon as the department pays those drafts. The whole amount of drafts found to be outstanding was $33,246 $\frac{39}{100}$, which sum includes the balance of $10,100 unpaid on No. 5923, above noticed, and four drafts taken up by Adams and Conrad, amounting to $11,574 $\frac{52}{100}$.

There was no money in the office sufficient in amount to pay one of the smallest outstanding drafts, and as Mr. McQueen assured me that he would take possession of the office on Monday, the 19th instant, I did not think it necessary to use my mandamus.

The mortgage according laws of Louisiana, remains with H. B. Cenas, notary, New Orleans, whose duty it is to have it recorded in New Orleans, and in the parish of Livingston, La., without delay, and to send you an authentic copy of the instrument, together with a certificate showing what incumbrances, if any, there are already on the property.

To give time for a full and fair settlement of accounts between the late postmaster and the department, it is stipulated that no movement to foreclose the mortgage is to be made until the expiration of six months; after that period the process of realizing may be made summary.

I am, very respectfully, your obedient servant,

Signed, JOHN MARRON.

HON. A. KENDALL,
Postmaster General.

(D.)

STATE OF LOUISIANA, *city of New Orleans:*

Be it known that this day, before me, Hilary Breton Cenas, a notary public in and for the city and parish of New Orleans, State of Louisana aforesaid, duly commissioned and qualified, personally came and ap-

peared William H. Ker, esquire, postmaster in and for this city, who declared, that whereas he is indebted unto the United States of America, for the use of the Post Office Department, in a sum not at present known, but which will be ascertained by a settlement of his accounts with the said department, now under investigation in the office of the auditor for the said department, which indebtedness, however, cannot exceed the sum of sixty-five thousand dollars.

Now, therefore, in order to secure the punctual payment to the said Post Office Department of the said sum of sixty-five thousand dollars, or of the amount to which the indebtedness of the said appearer may be reduced, on the settlement of his accounts, at any time when thereunto required, from and after six months from the date of these presents, he, the said appearer, moreover declared, that he does hereby specially mortgage and hypothecate unto Amos Kendall, Postmaster General of the United States of America, and his successors in office, herein represented by *John Marron, esq.*, of the city of Washington, and District of Columbia, here present and accepting, for the said Kendall and his successors in office, the following described property and slaves, to wit:

1st. A tract of land, situate in the parish of Livingston, in this State, having a front of sixteen acres on the river Tickfau, bounded on the south by lands owned by Jas. Johnson, on the west by vacant lands owned or claimed by S. G. Parsons, containing about six hundred and forty acres, being the tract usually called the "Rome tract."

2d. And also another small tract on said river, immediately opposite to the one first described, being lot No. 2, of section No. 1, of township No. 8 and 9 south, of range six east, and containing thirteen $\frac{20}{100}$ acres; together with all and singular the buildings and improvements on said two tracts of land.

3d. And also the following slaves employed on said property, to wit:

Jim, a negro man, sawyer, aged thirty-five years.
Cupid, do do twenty-five years.
John, do engineer, nineteen years.
Peter, a mulatto, do twenty-four years.
Ketty, a negro woman, twenty-five years.
Mary, do twenty-seven years, with two male children, one aged about five years, and the other about two years; and
Kate, a negro woman, aged about twenty-five years, with an infant male child.

4th, and lastly. The following slaves now in this city, to wit:

Alexander, a negro man, carpenter, aged about 25 years.
Elsey, a negro woman, seamstress, aged 25 years.
Peggy, do cook, 28 years.
Mary Ann, aged about thirteen years.
Susan, eight years,
Sarah, six years,
Henry, ten years,
} children of Peggy.
Mary, a washerwoman, aged about 26 years, and her children, viz:

Susan, aged about six years, and an infant male child, about six months old. And

Andrew, a negro man, aged about 30 years.

The said William H. Ker, hereby promising and binding himself not to alienate, deteriorate, or encumber the said property and slaves, to the prejudice of this mortgage.

And the said Ker moreover declared, that there are no other incumbrances existing on the said property and slaves than a general mortgage in favor of his minor children, which is now in progress of settlement, and will be reduced as soon as possible, and the mortgage in favor of Charles M. Conrad and Christopher Adams, jr., resulting from an act passed before Amédée Ducatel, a notary public in this city, on the 4th May, 1839; and further, that he will procure, as speedily as possible, certificates from the recorder of mortgages for the parish and the said parish of Livingston, showing the actual state of the mortgages upon said property and slaves, and attach the same to this act, as required by article "3328" of the civil code of this State. Whereupon the said John Marron declared that he dispensed with the present production of such certificates, holding the said Ker bound to produce them hereafter, and releasing me, said notary, from all responsibility or liability in the premises.

And now personally came and appeared the said Charles M. Conrad and Christopher Adams, jr., both of this city, who, intervening in these presents, and having read what is above written, declared, that they hereby bind themselves to cancel the mortgage in their favor, as above mentioned, as soon as they shall have received intelligence of the payment of certain warrants, being Nos. "610," "609," "617," and "9576," drawn of the said Ker by the Post Office Department of the United States, and recently transmitted to the said department for settlement.

Thus done and passed in my office, at the city of New Orleans, in the presence of L. Dorman and E. Grant, witnesses, who hereunto sign their names, with the said appearers and me, said notary, on the fifteenth day of August, eighteen hundred and thirty-nine.

Original—Signed Wm. H. Ker, John Marron, C. M. Conrad, C. Adams, jr., Lew. Dorman, E. Grant, H. B. Cenas, notary public.

[L. S.] I certify the foregoing to be a true copy of the original act entered in my register. In faith whereof I grant these presents, under my signature and the impress of my seal of office, at New Orleans, this 16th day of August, 1839.

Signed, H. B. CENAS, *Not. Pub.*

I, the undersigned, recorder of mortgages for the city and parish of New Orleans, State of Louisiana, certify that the special mortgage contained in the present act, has been recorded in my office, on the sixteenth inst., in book 41, folio 488.

Signed, P. LAMREAUX, *Recorder.*

NEW ORLEANS, *the 17th August*, 1839.

I, the undersigned, judge and ex officio recorder of mortgages in and for the parish of Livingston, State of Louisiana, do hereby certify the foregoing act of mortgage to be duly registered in my office this day, in book E, pages 108, 109, and 110.

In testimony whereof, I grant these presents under my official signature and impress of my seal of office, this 24th day of August, A. D. 1839.

Signed, BOWLIN CHILDRESS, *P. J.*

I certify that the foregoing transcript is a true copy from the original, now on file in this office.

In testimony whereof, I have hereunto subscribed my name, and caused to be affixed my seal of office, at Washington, this [L. S.] nineteenth day of November, in the year one thousand eight hundred and thirty-nine.

Signed, C. K. GARDNER,
Auditor of the Treasury for the Post Office Department.

POST OFFICE DEPARTMENT, *July 18th*, 1839.

WILLIAM H. KER, esquire,
Postmaster, New Orleans, La.

SIR: Your letter of the 9th instant, which is just at hand, fills me with surprise and pain.

You cannot but be aware that the use to which you have applied the public money constitutes no excuse for its misapplication. I hope it is in your power to make an immediate arrangement to meet the drafts of the department to the full amount of your indebtedness.

Nothing else, I am sure, could induce the President to retain you in office for a single day. By the next mail, I shall forward your letter to him for his information. I hope you will spare no time, after receipt of this, in apprizing me what may be expected from you.

Most sincerely do I hope that you may be able to save your reputation, and avert unjust reproach upon the department, by a prompt arrangement to discharge the debt.

Very respectfully, your obedient servant,
Signed, AMOS KENDALL.

(F.—Copy.) POST OFFICE DEPARTMENT, *July 24th*, 1839.

WILLIAM H. KER, esquire,
Postmaster, New Orleans, La.

SIR: This letter will be presented to you by John Marron, esquire, chief clerk of this department, whom I have felt it my duty to send to New Orleans in consequence of your recent communication.

It is in your power, if not too late, to save your reputation. It would be impossible for me or the President, without a dereliction in duty to the public, to shield you by concealment and indulgence.

A decisive effort to retrieve your error, at whatever sacrifice, is your only hope. Liberal men will be inclined to look with a forgiving eye on the past, if they see you putting forth all your powers, and making

all necessary sacrifices, to replace the funds you have misapplied. Mr. Marron will confer with you, before he makes his business known to any other person in New Orleans. In the hope that his mission may not be in vain, I remain, sir, very respectfully, your obedient servant,

Signed, AMOS KENDALL.

THE UNITED STATES, plaintiffs,
vs.
HODGE & PIERCE, defendants.

In a certain cause depending in the circuit court of the United States for the ninth judicial circuit, and eastern district of Louisiana.

The deposition of John Marron, chief clerk of the Post Office Department, a witness on the part of the defendants in the said cause, called and examined at the city of Washington, in the District of Columbia, on the 24th day of March, 1840, (in virtue and pursuance of the annexed commission from the said court,) before the honorable Buckner Thruston, one of the judges of the circuit court of the said District of Columbia; and the said witness having [been] first carefully cautioned and examined, and sworn by the said judge, to testify the whole truth, and being especially examined on the interrogatories annexed to said commission, doth now here, at the time and place aforesaid, upon such his examination and oath, testify and depose in the words following, to wit:

Answer to interrogatory 1st. Deponent is the person to whom this interrogatory relates.

Answer to interrogatory 2d. I am chief clerk of the Post Office Department, and have occupied the same station since September, 1836.

Answer to interrogatory 3d. I was sent to New Orleans, La., in July, 1839, for the purposes set forth in the Postmaster General's instructions to me, dated 23d July, 1839, a copy of which, marked A, is appended to the deposition of Amos Kendall, taken under the same commission to which my answers are made.

Answer to interrogatory 4th. I returned to Washington on the 3d September, 1839. My letters of the 15th and 18th August, 1839, copies of which, marked B and C, appended to said deposition of Amos Kendall, are the only reports made by me, in writing, to the Postmaster General, in relation to my proceedings in New Orleans, with respect to the balance due to the Post Office Department by W. H. Ker, late postmaster of New Orleans.

Answer to interrogatory 5th. My said letters to the Postmaster General, dated 15th and 18th August, 1839, are the only letters, correspondence, or reports made by me to the Postmaster General, in relation to Wm. H. Ker's accounts with the Post Office Department.

Answer to interrogatory 6th. I did exhibit to the Postmaster General an act of mortgage from William H. Ker, a copy of which, marked D, is appended to the deposition of Amos Kendall, which was referred to the Auditor for the Post Office Department, who is charged, by law, with the settlement of late postmasters' accounts.

Answer to interrogatory 7th. The copies of letters marked E and F, appended to Amos Kendall's depositions, are referred to as furnishing my answer to this interrogatory.

Signed, JOHN MARRON.

Done before me, this 24th day of March, 1840,

Signed, B. THRUSTON.

THE UNITED STATES, plff's,
vs.
HODGE & PIERCE, def's.

In a certain cause depending in the circuit court of the United States for the ninth judicial circuit and eastern district of Louisiana.

The deposition of Charles K. Gardner, Auditor of the Treasury for the Post Office Department, a witness on the part of the defendants in the said cause, called and examined at the city of Washington, in the District of Columbia, on the 24th day of March, 1840, (in virtue and pursuance of the annexed commission from the said court,) before the honorable Buckner Thruston, one of the judges of the circuit court of the said District of Columbia; and the said witness having been first carefully examined and cautioned, and sworn by the said judge to testify the whole truth, and being especially examined on the interrogatories annexed to said commission, doth now here, at the time and place aforesaid, upon such his examinations and oath, testify and depose, in the words following, to wit:

Answer to interrogatory 1st. I have known John Marron for upwards of nine years.

Answer to interrogatory 2d. He is now, and was on the 15th day of August, 1839, chief clerk of the Post Office Department.

Answer to interrogatory 3d. I have no knowledge of the subjects of this interrogatory but by information from the Postmaster General Amos Kendall, and John Marron.

Answer to interrogatory 4th. The same as to interrogatory the third.

Answer to interrogatory 5th. The same as to interrogatory third.

Answer to interrogatory 6th. I have a knowledge of the act of mortgage to which this interrogatory applies, which act or document was referred to me by the Postmaster General, and was transmitted by me, under date of the 7th January, 1840, to Thomas Slidell, esquire, U.S. district attorney for the eastern district of Louisiana, at New Orleans: a copy of which act or document is annexed to the deposition of the said Postmaster General, and referred to in his answer to this interrogatory, which deposition I have read.

Answer to interrogatory 7th.

I have had no correspondence with W. H. Ker, late postmaster at New Orleans, relative to the subject or subjects of this interrogatory, and have no knowledge of the correspondence of the Post Office Department with said W. H. Ker, except by information from the Postmaster General.

I transmitted the certified account, and the case against W. H. Ker and his sureties, for suit, to the U. S. district attorney, as aforesaid, under date of the 18th November, 1839.

Signed, C. K. GARDNER.

Sworn before me, this 24th day of March, 1840.

Signed, B. THRUSTON.

DISTRICT OF COLUMBIA:

Be it known and remembered, that, on the days and times hereinafter mentioned, at the city of Washington, in the District of Columbia aforesaid, in the due pursuance and execution of the annexed commission, from the said circuit court of the United States for the ninth judicial circuit and eastern district of Louisiana, and in and by virtue of the authority in me vested by the said commission, before me, Buckner Thruston, one of the judges of the circuit court of the District of Columbia aforesaid, duly appointed, commissioned, and qualified, personally came and appeared the aforesaid witnesses and deponents in the foregoing and annexed depositions, and in the several captions thereof respectively named and described as aforesaid, to wit, on the 23d day of March, in the year 1840, Amos Kendall, Postmaster General of the United States, and on the 24th day of the same month John Marron, chief clerk of the Post Office Department, and Charles K. Gardner, Auditor of the Treasury for the Post Office Department, to each and every of whom the said commission, and the interrogatories thereunto annexed, were then and there duly exhibited; that they, the said witnesses and deponents, severally and respectively, were, then and there, by me duly and carefully examined, and cautioned, and sworn, to testify the whole truth in the cause named in the said commission and interrogatories; that they, the said witnesses and deponents, and each and every of them, did, then and there, each for himself, severally and respectively, upon such their several and respective examinations, cautions, and oaths, testify and depose, in answer to the said interrogatories, in the very words set down and written in their said foregoing and annexed depositions; that the said depositions were then and there severally and respectively written by each of them for himself respectively, and subscribed by each and every of them, severally and respectively, in my presence, in manner and form as the said depositions now appear hereto annexed; that the foregoing and annexed documents and papers, severally marked A, B, C, D, E, and F, are the identical documents and papers then and there produced by the said Amos Kendall, at his said examination referred to in said deposition, and thereunto annexed, and are the same documents and papers also mentioned and referred to by the said John Marron in his said deposition; and that the one of the said documents and papers marked D, is the identical document and paper also mentioned and referred to, as an act of mortgage, by the said Charles K. Gardner, in his said depositions.

In testimony of all which matters, so certified by me as aforesaid, I have hereunto subscribed my name and affixed my seal, this 24th day of March, A. D. 1840. Signed, B. THRUSTON. [L. S.]

And afterwards, to wit, on the 1st of April, 1843, the following was filed, being a statement of evidence offered and read by both parties:

UNITED STATES
vs.
LEVI PIERCE and ANDREW HODGE, JR.

CIRCUIT COURT OF THE UNITED STATES,
Eastern district of Louisiana:

Be it remembered that, on this seventh day of February, eighteen hundred and forty-three, the above entitled suit came on to be tried, when Balie Peyton, esquire, district attorney, appearing for the plaintiffs, and John R. Grymes and George Eustis, esquires, appearing for the defendants; and after the jury was duly empannelled, and the pleadings read, plaintiffs' attorney offered and read in evidence the following documents, to wit, the copy of the official bond of the said William H. Ker, his oath of office, and the treasury transcript, together with all the documents, papers, and vouchers thereto annexed, marked exhibit B, C, and D.

The defendants' counsel offered and read in evidence copy of mortgage marked exhibit A, the depositions of Amos Kendall, John Marron, and C. K. Gardner, together with the various letters and documents thereto appended, marked exhibit E.

Signed, THEO. H. McCALEB, [SEAL] *U. S. Judge.*

And on the same day and year the following bills of exceptions *was* filed:

THE UNITED STATES
vs.
ANDREW HODGE, JR., and al.

CIRCUIT COURT OF THE UNITED STATES,
Eastern district of Louisiana:

On motion of Balie Peyton, esquire, United States district attorney, it is ordered that the defendant show cause, on Saturday, the 18th day of February instant, why a new trial should not be granted in this case, on the grounds that the judge erred in his charge to the jury, and that the finding of the jury was contrary to law and evidence.

Which rule came on to be tried, and the same was dismissed, and a new trial refused; to which opinion of the court plaintiffs, by their attorney, except, and pray that the same may be signed and filed as part of the record.

Signed, THEO. H. McCALEB, [SEAL] *U. S. Judge.*

THE UNITED STATES
vs.
LEVI PIERCE AND ANDREW HODGE, JR.

CIRCUIT COURT OF THE UNITED STATES,
Eastern district of Louisiana:

On the trial of this cause, the district attorney, B. Peyton, in behalf of the plaintiffs, requested the court to charge the jury—

First. That the defendants could not in this court avail themselves of any defence growing out of an extension of time to their principal, even if the jury believed that time had been given on the 18th August, 1839, because the condition of the bond sued on had been broken, and the liability of the defendants had attached; but that their relief, if any, was in a court of equity.

Which charge the court refused to give.

And the said attorney also requested the court to charge the jury—

Second. That neither the Postmaster General, nor any person appointed for him, had the power in 1839, or since, to grant delay, extend the time, or postpone the collection of the debts due to the Post Office Department.

Which charge the court adopted, with the addition of the following, "but that said power was vested entirely in the Auditor of the Treasury for the Post Office Department."

And the said attorney also requested the court to charge the jury—

[Third.] That the Government of the United States is a privileged creditor in cases of insolvency, or general assignment of all the debtor's property, and that this privilege attaches in cases like the present from the time of the defalcation, or acknowledged indebtedness.

Which charge the court adopted.

And the said attorney also requested the court to charge the jury—

Fourth. That the United States had a right to take collateral and additional security by mortgage or otherwise, without in any manner releasing their claim against the securities upon their bond.

Which charge the court adopted.

And the said attorney also requested the court to charge the jury—

Fifth. That the said John Marron, who was sent by the Postmaster General, with a letter of instructions particularly defining his powers, and which gave him no authority to extend time, grant indulgence, or tie up the hands of the Government; that if said Marron did enter into, or make any such agreement, the same is void and of no effect, unless the same was expressly ratified and confirmed by the proper officer of the Government, which officer was the Auditor of the Treasury of the Post Office Department.

Which charge the court refused, because it was of opinion that a ratification could legally take place otherwise than in express terms.

And the said attorney also requested the court to charge the jury—

Sixth. That forbearance and giving time, in the meaning of the law, is an engagement which would have tied the hands of the Government, and deprived it of the right to sue said Ker, on his official bond.

Which charge the court adopted.

And the said attorney also requested the court to charge the jury—

Seventh. That neither the Postmaster General, nor the Auditor of Treasury for the Post Office Department, had the power to tie the hands of the Government, and deprive it of the right of suing said Ker on said bond; and if any such agreement was made as alleged by said Marron, and ratified by the said Postmaster and Auditor, the same was

illegal and void, and the Government would have had a right to sue said Ker, notwithstanding said agreement.

Which charge the court refused.

And the said attorney also requested the court to charge the jury—

Eighth. That there must be a special and express power to an agent or attorney in fact, to authorize him to accept a mortgage on lands and slaves in the State of Louisiana, or to make a transaction or compromise of matters in litigation in said State, or an express ratification of said act by the principal.

Which charge the court adopted.

And the said attorney also requested the court to charge the jury—

Ninth. That before the Government can be bound by the authorized acts of said Marron, there must be evidence sufficient to satisfy the mind of the jury that said acts were expressly confirmed and ratified by the proper officer of the Government, and that the filing a copy of the said act of mortgage in the office of the Auditor of the Treasury for the Post Office Department, is not sufficient evidence to justify the jury in finding that fact.

Which charge the court refused, because the attorney for the United States refused to strike out the word expressly, before the words "ratified and confirmed."

And the said attorney also requested the court to charge the jury—

Tenth. That a mortgage is an act importing a confession of judgment, and an agreement not to foreclose a mortgage for a given time is in its legal effect a stay of execution. The act of Congress fixed the opening of the fall term of this court in 1839, for the third Monday of December of that year, and that if the jury believe that in the usual course of such proceedings no judgment could have been obtained, and execution issued thereon against said Ker before the expiration of six months from the date of such mortgage, then there was not such a giving of time as would discharge the defendants. That the jury must believe that the said agreement, in giving time, was injurious to the interest of defendants before they can be discharged.

Which charge the court refused.

And the said attorney also requested the court to charge the jury—

Eleventh. That according to the true interpretation of said mortgage, a copy of which is hereunto annexed, exhibit A, there was and is contained therein no stipulation or agreement to extend the time, or preclude the Government from suing the principal and sureties on said bond.

Which charge the court refused, because it was of opinion that the jury were the proper judges of the stipulations of the mortgages as matter of fact, and they could say, upon a perusal of the act, whether any thing therein contained provided for an extension of time. To which opinions of the court, refusing to charge, as requested by the district attorney, the plaintiffs, by their said attorney, except, and pray that this their bill of exceptions, with the documents referred to therein, be

signed, sealed, and made a part of the record in this case, which is accordingly done.

(Signed,) THEO. H. McCALEB, [L. S.]
United States Judge.

August 15th, 1839.—Mortgage by William H. Ker to Amos Kendall, Postmaster General of the United States.

STATE OF LOUISIANA, *city of New Orleans:*

Be it known, that this day before me, Hilary Breton Cenas, a notary public, in and for the city and parish of New Orleans, State of Louisiana aforesaid, duly commissioned and qualified, personally came and appeared William H. Ker, esq., postmaster in and for this city, who declared that whereas he is indebted unto the United States of America, for the use of the Post Office Department, in a sum not at present known, but which will be ascertained by a settlement of his accounts with the said department, now under investigation in the office of the auditor for the said department, which indebtedness, however, cannot exceed the sum of sixty-five thousand dollars.

Now, therefore, in order to secure the punctual payment to the said Post Office Department, of the said sum of sixty-five thousand dollars, or of the amount to which the indebtedness of the said appearer may be reduced on the settlement of his accounts at any time when thereunto required, from and after six months from the date of these presents; he, the said appearer, moreover declared, that he does hereby specially mortgage and hypothecate unto Amos Kendall, Postmaster General of the United States of America, and his successors in office, herein represented by John Marron, esquire, of the city of Washington and District of Columbia, here present and accepting for the said Kendall, and his successors in office, the following described property and slaves, to wit:

First. A tract of land situate in the parish of Livingston, in this State, having a front of sixteen acres on the river Tickfaw, bounded on the south by lands owned by Jas. Johnson, on the west by vacant lands bound or claimed by S. G. Parsons, containing about six hundred and forty acres, being the tract usually called the "Rome tract."

2d. And also another small tract on said river, immediately opposite to the one first described, being lot No. 2, of section No. 1, of township Nos. 8 and 9 south, of range six east, and containing thirteen $\frac{20}{100}$ acres, together with all and singular the buildings and improvements on the said two tracts of land.

3d. And also the following slaves employed on said property, to wit:

Jim, a negro man, sawyer, aged about 35 years.
Cupid, do. " " 25 "
John, do. engineer " 19 "
Peter, a mulatto, do " 24 "
Ketty, a negro woman, " 25 "
Mary, do. " 27 " with her two male children, one aged about five years and the other about two years; and,

Kate, a negro woman, aged about 25 years, with an infant male child.

4th and lastly. The following slaves now in this city, to wit:

Alexander, a negro man, carpenter, aged about 25 years.

Elsey, a negro woman, seamstress, 25 "

Peggy, do. cook, 28 "

Mary Ann, aged about 13 years,
Susan, 8 years,
Sarah, 6 years,
Henry, 10 years,
} Children of Peggy.

Mary, a washerwoman, aged about 26 years, and her children, Susan, aged about six years, and an infant male child about six months old; and,

Andrew, a negro man, aged about 30 years.

The said William H. Ker hereby promising and binding himself not to alienate, deteriorate, or encumber the said property and slaves to the prejudice of this mortgage.

And the said Ker moreover declared, that there are no other incumbrances existing on the said property and slaves than a general mortgage in favor of his minor children, which is now in process of settlement, and will be reduced as soon as possible; and the mortgage in favor of Charles M. Conrad and Christopher Adams, junior, resulting from an act passed before Amédée Ducatel, a notary public in this city, on the 4th May, 1839; and further, that he will procure, as speedily as practicable, certificates from the recorder's office of mortgages for this parish, and the said parish of Livingston, showing the actual state of the mortgages upon said property and slaves, and attach the same to this act, as required by article "3328" of the civil code of this State; whereupon the said John Marron declared that he dispensed with the present production of such certificates, holding the said Ker bound to produce them hereafter, and releasing me, said notary, from all responsibility or liability in the premises.

And now personally came and appeared the said Charles M. Conrad and Christopher Adams, junior, both of this city, who, intervening in these presents, and having read what is above written, declared, that they hereby bind themselves to cancel the mortgage in their favor, as above mentioned, so soon as they shall have received intelligence of the payment of certain warrants, being Nos. "610," "609," "617," and "9,576," drawn on said Ker by the Post Office Department of the United States, and recently transmitted to said Department for settlement.

Thus done and passed in my office, at the said city of New Orleans, in the presence of L. Dornan and E. Granet, witnesses, who hereunto sign their names, with the said appearers, and me, said notary, on this 15th day of August, eighteen hundred and thirty-nine.

Original signed, Wm. H. Ker, John Marron, C. M. Conrad, C. Adams, jr., E. Granet, Lawl. Dornan, H. B. Cenas, N. P.

I certify the foregoing to be a true copy of the original act extant in my current notarial register. In faith whereof, I grant these presents under my signature, and the impress of my seal of office at New Orleans, this 31st day of March, 1840.

Signed, H. B. CENAS.

STATE OF LOUISIANA, *Parish of Livingston:*

I hereby certify that an authentic copy of the foregoing act of mortgage was duly registered in my mortgage register, book E, pages 108, '9, and '10, on the twenty-fourth day of August, eighteen hundred and thirty-nine; and I further certify, that on the day of said record, there existed no liens or mortgages of record in my office, other than the one in favor of Charles M. Conrad and Christopher Adams, jr., of New Orleans, as per act passed before Amédée Ducatel, notary public of New Orleans, on the fourth day of May, eighteen hundred and thirty-nine, and recorded in my office on the tenth day of June of same year, upon the property and slaves described in the foregoing act of mortgages, to secure the payment—

1st. The sum of $5,000, five thousand dollars, and eventual revenue thereon, either in whole or in part, after maturity.

2nd. Two liens, each of the amount of $3,199 $\frac{23}{100}$, thirty-one hundred and ninety-nine $\frac{23}{100}$ dollars, and

3d. To secure an eventual interest at the rate of eight per centum per annum on all such sums of money, which, as endorsers, said Conrad and Adams might advance or disburse for said Ker.

In testimony whereof, I have hereunto signed my name and set [ ] the seal official, this ninth day of April, A. D. eighteen hundred and forty.

Signed, B. CHILDRESS, *P. J.,*
and ex-officio Recorder of Mortgages.

OFFICE OF MORTGAGES.

The undersigned, recorder of mortgages for the parish and city of New Orleans, State of Louisiana, certifies: That in the records in his office, there is no other mortgages standing in the name of William Harvey Ker, and recorded against "Alexander, a negro man of 35 years, carpenter; Elsey, negro woman, seamstress, 25 years; Peggy, negro woman, cook, 28 years; Mary Anne, of 13 years, Suzan, of 8 years, Sarah, of 6, and Henry, of 10—the children of Peggy; Mary, a washerwoman, of 26 years, and her children—Suzan, of 6 years, and an infant boy of 6 months"—than,

1st. The one he granted per act before Amédée Ducatel, notary, dated 4th May, 1839, on the above named slaves, and other landed property and slaves therein mentioned, in favor of Chas. M. Conrad and Christopher Adams, junior, to secure eleven thousand three hundred ninety-eight dollars and forty-six cents, and interest thereon at 8 per centum per annum, as more fully mentioned in said act.—$11,398 46.

2d. The one he granted per act before H. B. Cenas, notary, dated 15th August, 1839, on the above named slaves, and other property, in favor of Amos Kendall, Postmaster General of the United States, and his successors in his office, represented by John Marron, esq., to secure the sum of sixty-five thousand dollars—($65,000).

3d. The one he granted per act before William Boswell, notary, dated 21st November, 1837, on the negro named Alexander, above described, in favor of Aaron Camplin, to secure twelve hundred dollars.

S. LAMREAU, *Reg'r.*

NEW ORLEANS, 16*th December*, 1839.

I, the undersigned, do hereby certify the foregoing to be a true copy of the original certificate annexed to an act of mortgage from William H. Ker to Amos Kendall, Postmaster General, passed before me, on this fifteenth day of August, eighteen hundred and thirty-nine.

In faith whereof, I hereunto set my hand and affix my seal of [SEAL.] office, this eleventh day of April, 1840.

Signed, H. B. CENAS, *Not. Pub.*

And afterwards, to wit, on the 20th July, 1843, the following petition for a writ of error was filed:

United States Circuit Court, No. 824.

THE UNITED STATES OF AMERICA
vs.
ANDREW HODGE & LEVI PIERCE.

Circuit Court of the United States,
Fifth circuit, Eastern district of Louisiana:

The petition of the United States, by their attorney, Balie Peyton, respectfully shows:

That there is error in the final judgment rendered in the above entitled suit on the 11th day of February, 1843; that the amount in controversy is more than two thousand dollars. Petitioners pray a writ of error, returnable to the next term of the Supreme Court at Washington.

Signed, BALIE PEYTON,
U. S. Att'y E. D. La.

Be it so.

Signed, THEO. H. McCALEB, *U. S. Judge.*
July 20th, 1843.

United States of America, ss:

The President of the United States, to the honorable the judges of the circuit court of the United States, in and for the 5th circuit, and holding sessions for the eastern district of Louisiana, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, or some of you, between the United States, plaintiffs, and Andrew Hodge, jr., and Levi Pierce, def'ts, a manifest error hath happened, to the great damage of the said United States, as by their complaint appears:

we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the second Monday of January next, in the said Supreme Court to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court of the United States, this 21st of July, in the year of our Lord one thousand eight hundred and forty-three.

[SEAL.] D. N. HENNEN, *Clerk of the United States Circuit Court and Eastern district of Louisiana.*

By H. B. PAGE, *Dep'y Clerk.*

(Endorsed.)

United States Circuit Court—No. 824.

UNITED STATES vs. HODGE & PIERCE. } Writ of error.

Copy of the writ of error lodged in the clerk's office of the circuit court of the United States, for the ninth circuit and eastern district of Louisiana, in pursuance [of] the statute in such cases made and provided, this 21st day of July, 1843.

BALIE PEYTON,
Attorney of Plaintiff in Error.

United States Circuit Court.

THE UNITED STATES vs. ANDREW HODGE and LEVI PIERCE. } No. 824.

Circuit Court of the United States, fifth circuit, eastern district of Louisiana:

The petition of the United States by their attorney, Balie Peyton, respectfully shews, that there is error in the final judgment rendered in the above entitled suit, on the 11th day of February, 1843, that the amount in controversy is more than two thousand dollars. Petitioners pray a writ of error, returnable to the next term of the Supreme Court at Washington.

Signed, BALIE PEYTON,
U. S. Att'y, La.

Be it so. Signed, THO. H. McCALEB,
Judge U. S.

I, Duncan N. Hennen, clerk of the United States circuit court for the 5th circuit and eastern [district] of Louisiana, do hereby certify, that the foregoing thirty-eight pages contain a full, faithful, and true transcript of the record and proceedings, together with all the evidence adduced on the trial of the case of "United States vs. Hodge and Pierce," as ordered by the attorney of the United States of this district.

In testimony whereof I have hereunto signed my name and affixed the seal of the said court, this 22d day of May, A. D. 1845, and of the American Independence the 69th year.

[L. S.] DUNCAN N. HENNEN, *Clerk*.

I, Theodore H. McCaleb, one of the judges of the circuit court of the United States for the fifth circuit and district of Louisiana, do hereby [certify] that Duncan N. Hennen, who signed the foregoing certificate, is the clerk of [the] circuit court of the United States for the fifth circuit and district of Louisiana, and was at the time of so doing, and that due faith and credit are due and ought to be given to his acts as such, and that the foregoing certificate is in due form of law.

Witness my hand and seal this 24th day of May, A. D. 1845.

THEO. H. McCALEB. [SEAL.]

Writ of Error.

Copy of the writ of error lodged in the clerk's office of the circuit court of the United States, for the fifth circuit and district of Louisiana, in pursuance the statute in such cases made and provided, this 7th day of May, 1845.

BALIE PEYTON,
Attorney of plaintiff in error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States in and for the fifth circuit, and holding sessions for the district of Louisiana, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you or some of you, between the said United States of America, plaintiffs, and Andrew Hodge and Levi Pierce are defendants, a manifest error hath happened, to the great damage of the said United States of America, as by their complaint appears: We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the honorable R. B. Taney, chief justice of the said Supreme Court of the United States, this seventh of May, [L. S.] in the year of our Lord one thousand eight hundred and forty-five.

DUNCAN N. HENNEN,
Clerk of the United States circuit court and eastern district of Louisiana.

Citation.

The United States of America, to Andrew Hodge and Levi Pierce, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States, for the fifth circuit and district of Louisiana, wherein the United States of America are plaintiffs in error, and you are defendants in error, to shew cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the honorable R. B. Taney, chief justice of the Supreme Court of the United States, this seventh day of May, in the [L. S.] year of our Lord one thousand eight hundred and forty-five.

THEO. H. McCALEB,
U S. Judge.

Marshal's return.

Received 7th May, 1845, and on the same day served copy of the within citation on A. Hodge, personally, at his office in New Orleans, and on same day left a copy at the office of Levi Pierce, which he acknowledges having received on the 13th day of May, 1845.

A. SIDNEY ROBERTSON,
U. S. Marshal.
By J. H. RINEHARDT, *Deputy.*

Filed 19th Nov., 1845.